No. 70-244

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

ROGER BOSHES, et al.,

*Petitioners,*

v.

GENERAL MOTORS CORPORATION and the HONORABLE WILLIAM J. CAMPBELL, Judge of the United States District Court for the Northern District of Illinois,

*Respondents.*

**On Petition for A Writ of Certiorari To the United States Court of Appeals for the Seventh Circuit**

## SUPPLEMENTAL BRIEF FOR RESPONDENT GENERAL MOTORS CORPORATION IN OPPOSITION


HAMMOND E. CHAFFETZ
JOSEPH DUCOEUR
ALAN I. BECKER
2900 Prudential Plaza
Chicago, Illinois 60601
*Attorneys for Respondent General Motors Corporation*

*Of Counsel:*
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS
2900 Prudential Plaza
Chicago, Illinois 60601

ROSS L. MALONE
ROBERT A. NITSCHKE
General Motors Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202


October 4, 1971

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

## SUBJECT INDEX


| | PAGE |
|---|---|
| ARGUMENT | 1 |
| CONCLUSION | 4 |


## TABLE OF AUTHORITIES CITED

CASES


| | |
|---|---|
| *Alabama State Fed'n of Labor* v. *McAdory*, 325 U.S. 450 | 2 |
| *Asbury Hosp.* v. *Cass County*, 326 U.S. 207 | 3 |
| *Bryan* v. *Austin*, 354 U.S. 933 | 3 |
| *Cox* v. *Louisiana*, 379 U.S. 559 | 2 |
| *Dorfman* v. *Meiszner*, 430 F. 2d 558 | 2 |
| *Estes* v. *Texas*, 381 U.S. 532 | 2 |
| *New York Times Co.* v. *United States*, 403 U.S. 713 | 3 |
| *Sheppard* v. *Maxwell*, 384 U.S. 333 | 2 |
| *United States* v. *General Motors Corp.*, 323 U.S. 373 | 3 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

## NO. 70-244

ROGER BOSHES, et al.,

*Petitioners,*

v.

GENERAL MOTORS CORPORATION and the HONORABLE WILLIAM J. CAMPBELL, Judge of the United States District Court for the Northern District of Illinois,

*Respondents.*

**On Petition for A Writ of Certiorari To the United States Court of Appeals for the Seventh Circuit**

## SUPPLEMENTAL BRIEF FOR RESPONDENT GENERAL MOTORS CORPORATION IN OPPOSITION

### ARGUMENT

This supplemental brief is submitted by respondent General Motors Corporation in response to the amici curiae's brief. It will show that the amici totally disregard the procedural posture of this case and that the amici base their arguments attacking Local Civil Rule 22 on a number of untested assumptions regarding the Rule.

The issue respecting Rule 22 was initiated by petitioners' motion which the District Court denied pending its consideration of respondent's previously submitted motion to dismiss the complaint. (Res. App. at 14; Pet. App. at 17a). Although the District Court has since ruled on the motion to dismiss, petitioners have purposively not refiled their motion as the District Court said they could do. (*Ibid.*) Moreover, Rule 22 has since been amended by the judges of the Northern District of Illinois to conform to a recommendation of the Judicial Panel on Multidistrict Litigation. (Res. App. at 22). Neither the original Rule, nor the amended Rule, has been passed on by either lower court. The record therefore contains no findings of fact or any crystalization of the issues, both of which are manifestly essential to sound review of the constitutionality of this or any other rule. *Alabama State Fed'n of Labor* v. *McAdory*, 325 U.S. 450, 460-461 (1945).*

Accordingly, the amici must couch their arguments in a factual vacuum and ignore that neither the District Court nor the Court of Appeals has had an opportunity to review the Rule or to determine the extent to which it applies to

---

* Although respondent does not believe it timely to argue the merits of the amici's First Amendment contentions, it should be noted that the amici address themselves to the issue at large, barely acknowledging (Amici Br. at 9) the decisions of this Court, as well as the Courts of Appeals, which have struck a balance between the exercise of an individual's constitutional rights and the protection of the integrity of judicial proceedings as part of due process. See, *e.g.*, *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966); *Estes* v. *Texas*, 381 U.S. 532 (1965); *Cox* v. *Louisiana*, 379 U.S. 559 (1965); *Dorfman* v. *Meiszner*, 430 F.2d 558 (7th Cir. 1970). Whether and how that balance should be struck here surely deserves more reasoned treatment than the amici's cavalier approach to constitutional issues.

petitioners. In place of a proper factual and procedural framework, the amici make a number of assumptions regarding the Rule, all of which are apparently designed to put the Rule in the worst possible light, and they then conclude that the Rule is unconstitutional. (Amici Br. at 5). To consider constitutional issues in this fashion would be an unwarranted exercise in judicial speculation. In all events, this Court should not be the *first* tribunal to consider the constitutionality of the Rule or its application to petitioners. See *Bryan* v. *Austin*, 354 U.S. 933 (1957); *Asbury Hosp.* v. *Cass County*, 326 U.S. 207, 213-216 (1945).*

Nor can the amici's haste to have this Court consider hypothetically the constitutionality of Local Rule 22 be justified by their extraordinary plea that the Court "make clear that compliance with [the] recommendation [of the Judicial Panel on Multidistrict Litigation to District Courts that they adopt rules to prevent abuse of class actions] . . . violates First Amendment rights." (Amici Br. at 13). Any ruling as to the constitutionality of the Panel's recommended rule should be made in a conventionally developed judicial setting.

---

* The absence of any ruling in either lower court explains why petitioners' reply brief, while colorful, is not particularly illuminating. Petitioners' reply brief also confuses the present case with cases where this Court has reviewed a lower court's interlocutory decision because such review was fundamental to the further conduct of the case. *E.g.*, *United States* v. *General Motors Corp.*, 323 U.S. 373, 377 (1945). That is clearly not the case here. Furthermore, in all instances where certiorari was granted to review an interlocutory order, including most recently *New York Times Co.* v. *United States*, 403 U.S. 713 (1971), the order reviewed was based upon a decision by the lower court on the merits of the issue involved. In this case, however, the lower courts have never held a hearing, received briefs, or ruled on the merits of any issue raised by petitioners' motion.

## CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

HAMMOND E. CHAFFETZ
JOSEPH DUCOEUR
ALAN I. BECKER
2900 Prudential Plaza
Chicago, Illinois 60601
*Attorneys for Respondent General Motors Corporation*

*Of Counsel:*
KIRKLAND, ELLIS, HODSON,
CHAFFETZ & MASTERS
2900 Prudential Plaza
Chicago, Illinois 60601

ROSS L. MALONE
ROBERT A. NITSCHKE
General Motors Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202

October 4, 1971